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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,215	12/21/2001	Steve Tischer	BS01280 (BS01280)	1463

7590 05/20/2003

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EXAMINER

ISSING, GREGORY C

ART UNIT	PAPER NUMBER
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3662

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/027,215

Applicant(s)

TISCHER, STEVE

Examiner

Gregory C. Issing

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-- **Th MAILING DATE of this communication appears on th cover sh et with th correspond nce address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16,33 and 35-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 33, and 35-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 36, 37, 39 and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification (see page 5) only discloses “the signal strength relative to the distance of the wireless device from a receiving antenna” to estimate battery power of the device. Therefore, the use of signal strength or distance alone is insufficiently disclosed in the specification and is considered new matter.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 16, 33, 35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tennison et al.

Figures 1 and 2 of Tennison show a system for tracking a mobile platform 10, which is a wireless device comprising laptop computers, palm-top computers and the like, wherein a central controller 50, which is remote from the mobile platform, comprises a database 56 for periodically receiving and storing position information sent by the mobile platform via a wireless communication network. The wireless network comprises any one or more of types of

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communication media comprising satellite, cellular, group mobile radio and the like. A control processor 24 in the mobile platform manages the communication operations including what data to collect and send and when to send it. Although Tennison et al suggest platform sensors that collect information relating to the operation and condition of the platform itself and monitoring the health of the mobile platform in order to catch, before actual failure, the need for maintenance, Tennison et al do not specify a communication of position when the battery reaches a predetermined level. However, in view of the desired use for tracking valuable assets, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Tennison et al by monitoring a battery level using one of the platform sensors monitoring the health of the device and to control a transmission upon sensing a predetermined battery level in order assure tracking of the device prior to failure.

The applicant argues that the prior art does not teach or suggest the limitations, motivation to combine or any expectations of success to combine and therefore the rejection should not be sustained. The previous rejection set forth a reason to modify the prior art which included information generally available to one of ordinary skill, i.e. to provide a position update for a stolen device before it would become inoperable and defeat the purpose of tracking mobile assets. The applicant has not provided any reasons as to why the proposed modification fails to teach the claimed subject matter but has only alleged that the claimed subject matter is not shown or that a combination of references are not suggested. Moreover, the rejection does not combine the prior art references but merely modifies the cited reference, using information well-known to the artisan as well as information within the reference including tracking mobile assets, monitoring health/status of the asset, and communicating position upon a predetermined

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condition. Thus, the applicant's argument that there is no reason to combine the references is not persuasive.

5. Claims 16, 33, 35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliot.

Elliot discloses a user device 12 (Figure 2) comprising a GPS receiver, means to encode the coordinates into data and a wireless communication device for sending the data via a wireless communication network to a central station 20 (Figure 3) which receives and stores the positional data of the user device in a database. The communication of position data from the user device is activated periodically, via remote interrogation or made upon automatic triggering of a sensed condition (movement threshold) at the user. Means may be included on the user device in the form of a light 24 to indicate a power level and may begin to flash when the battery needs to be recharged since the device operates on battery power. Elliot differs from the claimed subject matter since the user device is not specified as causing the position to be sent upon the detection of the battery level reaching a predetermined level. In view of the desired use of the device to track the mobile user in the event of theft or abduction, in view of the suggestion to automatically trigger a communication of position upon a sensed condition, and in view of the fact that there is included within the user device a means to provide a measure of the battery power reaching a predetermined level, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Elliot by automatically triggering a communication of position upon detection of sensing low battery level in order to provide an updated track of the user device upon the theft or abduction therefore so as to not defeat the purpose of the tracking device and provide a position prior to the device becoming inoperative.

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6. The applicant argues that the prior art does not teach or suggest the limitations, motivation to combine, or any expectations of success to combine, and therefore the rejection should not be sustained. The previous rejection set forth a reason to modify the prior art which included information generally available to one of ordinary skill, i.e. to provide a position update for a stolen device before it would become inoperable and defeat the purpose of tracking mobile assets. The applicant has not provided any reasons as to why the proposed modification fails to teach the claimed subject matter but has only alleged that the claimed subject matter is not shown or that a combination of references are not suggested. Moreover, the rejection does not combine the prior art references but merely modifies the cited reference. Thus, the applicant's argument that there is no reason to combine the references is not persuasive.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory C. Issing whose telephone number is (703)-306-4156.

The examiner can normally be reached on Mon-Thurs 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on (703)-306-4171. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Gregory C. Issing  
Primary Examiner  
Art Unit 3662

gci  
May 15, 2003